

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Case No. 2010030859

LAURENCE M.

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

The hearing in the above-captioned matter took place on March 2, 2011, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. The hearing was held at the San Gabriel/Pomona Regional Center (Regional Center or Service Agency). The Regional Center was represented by Daniela Martinez, Fair Hearing Manager. Claimant Laurence M. was not present, but he was represented by one of his co-conservators, his stepmother, Sylvia M¹. She was assisted by Kathleen R., who acted as a lay advocate.

At the outset of the hearing it appeared that the recording equipment was not functioning properly. The parties stipulated in writing that if the hearing was not recorded, then an evidence summary would be prepared by the ALJ, and circulated. Any objections to the summary would be resolved, and that summary would form the basis of a decision.

An evidence summary was served on Ms. Martinez and Ms. Sylvia M. on July 6, 2011. There was no objection by the Service Agency, but on July 11, 2011, the ALJ was informed that Ms. M. had passed away. The ALJ then contacted Claimant's co-conservator, Mr. Murphy D., and Ms. Kathleen R., and they agreed they would review the evidence summary and lodge any objections they might have. The evidence summary was served on

¹ Initials are used in the place of surnames in the interest of privacy.

them by mail, with notice to Ms. Martinez, on July 15, 2011. No objection was received within the allotted timeline, and it will therefore form the basis of the decision.

The matter was deemed submitted on July 26, 2011.

ISSUE PRESENTED

May the Service Agency terminate funding for a companion to spend time with Claimant?

FACTUAL FINDINGS

1. Claimant is a long-time consumer of services from the Service Agency. He is eligible for services under the the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² The dispute in this proceeding pertains to whether services previously provided to Claimant should continue.

2. Claimant is eligible based on his diagnosis of mild mental retardation. He is 61 years old, and lives in a licensed group facility within the Service Agency's catchment area. As detailed further below, the Service Agency had previously funded for a companion who would spend four hours per week with Claimant. Other services have been provided to Claimant as well, such as behavioral services.

3. In December 2009, the Service Agency served a Notice of Proposed Action (NOPA) on Claimant's conservators, Murphy D. and Sylvia M. (Ex. 1.) The NOPA stated the intention of the Service Agency to terminate the funding for the paid companion. Claimant's conservators did not request a hearing until February 20, 2010, and hence the service ended, and was not being provided as Aid Paid Pending.³ All jurisdictional requirements have been met.

4. (A) The Service Agency had previously agreed that it would fund for a companion to spend time with Claimant, a one-to-one service. That agreement was made in February 2006 to resolve a prior dispute, and the agreement was memorialized in a Notice of

² All further statutory citations are to the Welfare and Institutions Code, and more specifically, to the Lanterman Act.

³ A copy of the Fair Hearing Request was not placed in evidence. However, the ALJ takes official notice of the request, a copy of which is contained in the OAH file. Notice of the intent to take official notice was given in the evidence summary. The Fair Hearing Request is received in evidence as Exhibit A.

Resolution signed after an informal hearing. A copy of the Notice of Resolution was received in evidence as part of Exhibit 7, at page 4 thereof.

(B) The 2006 Notice of Resolution was accompanied by a letter signed by Ms. Martinez. After noting the reasons provided by Claimant's representatives in support of funding a paid companion, Ms. Martinez stated, on behalf of the Service Agency, that "it is our decision to grant your request for the San Gabriel Pomona Regional Center to fund for 16 hours per month for a companion for community integration activities." (Ex. 7, p. 2.)

(C) It is inferred that the service was continued in Individual Program Plans (IPP) that were subsequently prepared, up until the time the NOPA issued. However, IPP documents for the years 2007 through 2009 were not adduced in evidence.

5. The legal basis for the Service Agency's NOPA was section 4648.5 of the Lanterman Act. That statute was enacted in the summer of 2009, and was part of the Legislature's response to the state budget crisis of that year. Section 4685.5 suspended the regional centers' power to fund social recreational services. The Service Agency contends that the companionship service previously funded is a social recreation service that must therefore be terminated. Although section 4685.5 provides for some exceptions, the Service Agency asserts that Claimant does not qualify for an exception.

6. Claimant attends a day program during the week. He can access the community, in that he can sign out of the facility where he lives and walk to a local bookstore or restaurant. (Ex. 2, p. 4.) He can count sufficiently, and has enough understanding of money so that he can purchase items such as music CD's, or food at one of the restaurants, although it has also been noted that he is unable to budget or save money in a meaningful fashion. (*Id.*) One of his favorite activities was described as looking for bargains at stores such as the 99 Cent Store, or thrift stores. (Ex. 6, p. 1.)

7. Claimant has a girlfriend at the residential facility. However, there is evidence that the relationship is somewhat one-sided, and she has been described in testimony as not as intelligent as Claimant. Therefore, some question exists as to how much companionship she can provide to Claimant.

8. At this time, Claimant is described as having no friends, at the residential facility or otherwise. He was described by his stepmother and Ms. R. as tending to be verbally aggressive, and lacking anyone he can vent to. Ms. R. perceived that Claimant's behavior improved when he had a companion, as he had someone he could vent to. At the time of the hearing, Claimant would occasionally visit with his stepmother.

9. The companion service was requested in 2006 in part because Claimant had interests that were unusual for regional center consumers. For example, he had an interest in fine arts and opera, but no friends with whom he could share such interests. (Ex. 7, p. 1.) At this time, he is in the same situation, having no one with whom he can share his favored interests. The evidence indicates that when he goes out into the community, other than to his

day program, he is likely to be doing so by himself. Safety concerns have not been reported in the various reports that were received in evidence.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction was established to proceed in this matter, pursuant to Code section 4710 et seq., based on Factual Findings 1 through 3.

Rules of General Applicability

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

3. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. (See §§ 4512, subd. (b); 4646, subd. (a).) Where the parties can not agree on the terms and conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

4. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken. A priority is assigned to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1), (a)(2).)

5. Section 4512, subdivision (b), of the Lanterman Act defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or

where appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option”

6. Section 4512, subdivision (b) goes on to identify a number of services that can be provided under the Lanterman Act, including but not limited to “follow-along services, . . . community integration services, . . . facilitating circles of support, . . . paid roommates, paid neighbors,”

7. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the individual consumer, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

The 2009 Legislation Relevant to This Case

8. In 2009, the Legislature enacted numerous statutes that impacted the delivery of services to regional center clients. Among those statutes is section 4648.5, which provides in its subdivision (a) that the authority of regional centers to purchase certain types of services was suspended. Among the list of suspended services was “social recreation activities.” (Subd. (a)(2).) It is this statute that the Service Agency relies on for its assertion that the companion service is a social recreation service. (Factual Finding 5.)

9. The Legislature did allow for exemptions. Subdivision (c) of section 4648.5 provides that “an exemption may be granted on an individual basis in extraordinary circumstances . . . when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs.”

Legal Conclusions Dispositive of the Case

10. When the companion service was first authorized, it was done so as community integration service, and with that goal in mind. (Factual Finding 4(B), citing Ex. 7, p. 2.) The service was not provided as recreation or a social service. As such, it does not fall squarely within the ambit of section 4686.5, and provision of the service is not barred by that statute.⁴

⁴ Community integration of those who suffer from developmental disabilities is one of the prime purposes of the Lanterman Act. Hence, services under the Act must be “sufficiently complete” so as to meet the needs and choices of each developmentally disabled person “at each stage of life and to support their integration into the mainstream of life of the

ORDER

The appeal of Claimant Laurence M. is sustained, and the Service Agency shall resume funding 16 hours per month for a companion for Claimant.

Dated: July 27, 2011

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION; BOTH PARTIES ARE BOUND BY THIS DECISION. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS.

community.” (§4501, 3d par.) Further, services and supports should be available to enable the developmentally disabled person to approximate the pattern of everyday living available to persons of the same age who are not developmentally disabled, and to allow the integration of the developmentally disabled into the mainstream of life within their communities. (*Id.*, 4th par.) Section 4685.5 should not be construed to severely limit such core goals of the Lanteman Act.